

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROLANDO HERNANDEZ,

Plaintiff,

v.

CITY OF VANCOUVER and MARK
TANNINEN,

Defendants.

Case No. C04-5539FDB

ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL and
DENYING PLAINTIFF'S EIGHT
DISCOVERY MOTIONS

Plaintiff Hernandez, a mechanic employed by the City of Vancouver and who transferred to a higher paying position in a different department within the City, alleges that he experienced a cold shoulder, disparate treatment, and vandalism, which led to extreme emotional distress resulting in time off and a transfer back to his earlier lower paying position. Plaintiff also alleges that City personnel persuaded a central witness, Defendant Tanninen, to change his recollection of events to protect the City. The City disputes these allegations. Both parties agree the case is not complex.

Defendants (henceforth, the City) moved on January 18, 2006 to compel production to their Second Request for Interrogatories and Production of Documents as well as for Hernandez' medical records from Kaiser Permanente. This motion was noted for February 10, 2006 and Hernandez' response was due February 6, 2006. On January 26, 2006, Hernandez filed eight discovery motions.

1 On February 22, 2006, Plaintiff moved for additional time in which to reply to the City's response to
2 his discovery motions, but this motion was denied.

3 Defendants' Second Request for Interrogatories and Production of Documents was served on
4 Plaintiff on October 24, 2005. Despite the City's letters and telephone calls to Plaintiff, neither
5 response nor responsive documents has been forthcoming. On October 26, 2005, the City wrote to
6 Plaintiff's counsel that it would seek Plaintiff's medical records by serving a subpoena duces tecum
7 on Kaiser Permanente in fourteen days. By telephone conference, the parties reached a mutually
8 agreeable procedure for the documents to be bates numbered and produced to the City. The
9 subpoena duces tecum was sent to Kaiser Permanente on November 14, 2005, and despite Plaintiff's
10 counsel having received the bates stamped documents, and despite Plaintiff's counsel's assurances to
11 the City that the documents and a privilege log would be forthcoming, to date the City has received
12 none of the requested medical records.


13 The City has responded to Hernandez' eight discovery motions in a single response, noting
14 first that Plaintiff's counsel has not conferred with Defense counsel to resolve the issues. The City
15 notes that Hernandez' first made 89 requests for production of documents and 34 interrogatories on
16 February 25, 2005. The City responded to the discovery on June 20, 2005 and produced 4,952
17 pages of documents on August 23, 2005. The parties conferred about Plaintiff's concerns on
18 September 19, 2005 and on September 28 an index by category was provided, supplemental
19 responses were provided October 12, 2005 along with 1,300 documents with an index and an
20 updated privilege log, and an expanded witness list with contact information. The City also responds
21 specifically to each discovery motion.

22 Defendants' Motion to Compel must be granted, as the responses are long overdue.
23 Plaintiff's discovery motions are denied as they were filed without counsel having conferred. An
24 award of costs to either party is denied at this time, but any future unprofessional or dilatory
25 behavior will not be condoned and sanctions will be imposed.

1 ACCORDINGLY, IT IS ORDERED:

- 2 1. Defendants' Motion to Compel [Dkt. # 21] is **GRANTED** and Plaintiff shall produce
3 the requested information as well as Plaintiff's medical records from Kaiser
4 Permanente **within five business days** of the entry of this Order on the docket;
- 5 2. Plaintiff's Discovery Motions [Dkt. #s 22, 23, 24, 25, 26, 27, 28, and 29] are
6 **DENIED**;
- 7 3. The Court declines to impose sanctions at this time.

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9 DATED this 31st day of March, 2006.

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12 FRANKLIN D. BURGESS
13 UNITED STATES DISTRICT JUDGE
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